IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Mohanlal Vs. State of Rajsasthan

D.B.CRIMINAL APPEAL NO.402/1987
against the judgment dt.29.9.1987 passed by the Additional Sessions Judge, Chittorgarh, in Sessions Case No.134/1985.

Date of Judgment: Oct.29, 2007

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.Manoj Pareek for Mr.Sanjay Mathur, for appellant.
Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT: (PER HON.BHAGWATI PRASAD J.)

1. The present appeal is filed by accused Mohanlal against his conviction & sentence passed by the court of Additional Sessions Judge, Chittorgarh in Sessions Case No.134/1985 dated 29.9.1987, whereby he has been convicted under Section 302 IPC and sentenced to life & a fine of Rs.200/-. He has also been convicted u/s.323/34 IPC.

2. The prosecution story was that the accused Nanda, Mohan and Lakhmi Chand were consuming liquor, while they were sitting in their courtyard. The uncle of accused Lakhmi Chand viz; Kishna had come to the house of complainant. As accused Lakhmi Chand and his uncle Kishna had some old dispute, while drinking, Lakhmi Chand was abusing Kishna and was exhorting that he had been defamed unnecessarily and he will settle the score with Kishna. On hearing this, Kishna went to the place, where the accused were consuming liquor, saying that he has become old and why he (Lakhmi Chand) was exhorting. There, he was belaboured by the accused Nanda, Lakhmi Chand and Mohan, who picked up respective weapons and started beating Kishna. On this, the complainant party came to intervene and in this intervention, while Nanda (deceased) also tried to intervene, accused Mohan gave `kulhari' blows on him and by those `kulhari' blows, he died. On the basis of said report, a case under Section 302 IPC was registered with the Police Station, Rawatbhata on 15.7.1984 at about 8.30 AM. The investigation was conducted and after investigation, chargesheet was filed. The case was made over to the trial Court and charges were framed against the accused by the trial Court under sections 302, 302/34, 325 & 323 IPC.

3. The accused denied the charges & claimed trial. At the trial, the prosecution examined 13 witnesses. The accused was examined under Section 313 CrPC. Three defence witnesses were also examined. The accused Mohan was convicted u/sec.302 IPC and accused Nanda and Lakhmi Chand were acquitted of the charges u/ss.302/34 and 325 IPC but convicted under Section 323/34. No appeal has been filed against the acquittal of accused Nanda & Lakhmi Chand under Section 302/34 IPC. Mohan was convicted under Sections 302 & 323/34 IPC. Accused Mohan alone has challenged his conviction.

4. While the appeal is before us, learned counsel for the appellant urged that there was no animus between the accused and the deceased. The basic conflict was between the injured Kishna and accused Lakhmi Chand. Accused Mohan alongwith other accused Nanda and Lakhmi Chand were consuming liquor. At that time, the complainant party came and intervened. The accused were drinking liquor. They got provoked. In that provocation, if they apprehended interference by the complainant party and the injuries have been inflicted by accused Mohan to Nanda (deceased), then it cannot be said that it was his intention to cause the death of deceased because there was neither any animus nor any intention. No provocation

was available except that the accused were drinking and at that time, the complainant party came to the house of the accused. Learned counsel for the appellant urged that in all fairness, causing hurts by Mohanlal to deceased Nanda were unjustified but that was when the complainant party approached them for intervention & while the complainant party intervened, there was exchange of blows between the parties and this exchange of blows resulted in simple injuries, thus, the intention to cause death is missing from the entire case. It was a case where an unintended injury has resulted into death of Nanda because there was hardly any premeditation. On the spur of moment, the injury has been caused by accused Mohan to deceased Nanda. While the accused was under the influence of liquor, he was not having complete control over him. More particularly, when the complainant party tried to intervene by entering into the house of the accused, in all fairness, the accused cannot be said to have caused the injury with intention to cause death. It was on spur of the moment that injuries have been sustained. The accused has already remained behind the bars for a period of six years and in that background, learned counsel for the appellant submits that at such distance of time i.e. about 20 years, it will not be fair to send the accused behind the bars by maintaining conviction under Sec.302 IPC. It would be fair, if the conviction of the accused is altered under Section 304 part II IPC because it

was an unintended injury without any premeditation and on the intervention by the complainant party at the house of the accused persons while they were drinking, this kind of interference got the tempers run high at the spot and unfortunate incident has occurred.

5. Per contra, learned Public Prosecutor submitted that may be, the complainant party intervened by entering into the house of the accused where they were drinking, but nonetheless the accused has caused such injury, which was sufficient in the ordinary course of nature to have caused the death of deceased Nanda. Deceased Nanda should not have been dealt in the fashion in which accused Mohan had inflicted injuries on him and in that view of the matter, learned Public Prosecutor supported the judgment of the learned trial court.

6. We have heard learned counsel for the parties and have given our thoughtful consideration.

7. We are of the considered view that it is not a case of causing assault after preparation or that any such contingency had been there, where the accused Mohan had any intention of causing death of deceased Nanda. On the contrary, deceased Nanda on his own intervened without any provocation from the

side of accused Mohan. There was some conflict between accused Lakhmi Chand and his uncle Kishna. That being the position, no direct animus existed between the deceased and accused. Moreover, the incident occurred has not been truthfully disclosed by the prosecution because while the accused persons were drinking in their house, the complainant party approached the accused persons by entering into their house & tried to intervene, which was totally uncalled-for for the complainant party to have gone to the house of the accused persons, who were drinking & if in that background, while some altercation was going on, such unfortunate incident has happened, then it cannot be said that there was an intentional act of accused Mohan to cause death of deceased Nanda. In that view of the matter, we are persuaded that conviction of accused appellant should be converted from Section 302 to Section 304 part II IPC. Here, the accused has already remained behind the bars for a period of six years and, therefore, we deem it proper that ends of justice would be met, if he is sentenced to the period already undergone.

8. In the result, the appeal is partly allowed. The conviction of the appellant recorded by the Additional Sessions Judge, Chittorgarh vide his judgment dated 29.9.1987 is altered from Section 302 to Section 304 part II IPC and for that, he is

sentenced to the period already undergone. However, his conviction under Sec.323/34 IPC is maintained. No separate sentence is required to be passed on that count.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

RANKAWAT JK, PS